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No. ——

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL NO. 12, AFL-CIO,
Petitioner,

v.

CARROLL WILSON, *et al.*,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Ninth Circuit held in this case that one party to a collective bargaining agreement can sue the other under *either* § 301 of the Labor-Management Relations Act, 29 U.S.C. § 185, *or* state law on a claim that the agreement is void because of fraud in the underlying collective bargaining negotiations. On this basis, the court of appeals affirmed a judgment for compensatory damages based on a *state law* fraud claim. The question raised by this decision is:

Whether a state law cause of action seeking compensatory damages for fraud in the collective bargaining negotiations that lead to a collective bargaining agreement is within the area covered by § 301's paramount federal common law of labor contracts, and therefore preempted?

LIST OF PARTIES TO THE PROCEEDING

Operating Engineers Pension Trust
Operating Engineers Health and Welfare Fund
Operating Engineers Vacation-Holiday Savings Trust
Operating Engineers Training Trust
Carroll E. Wilson
Patricia J. Wilson
Wilson Equipment, a Partnership
International Union of Operating Engineers, Local No. 12
Hoss Kinsey

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PETITION FOR A WRIT OF CERTIORARI

International Union of Operating Engineers, Local No. 12, third-party defendant in the district court and appellant in the court of appeals, petition for a writ of *certiorari* to review the judgment of the United States Court of Appeals for the Ninth Circuit in *Operating Engineers Pension Trust v. Wilson*, 915 F.2d 535 (9th Cir. No. 88-6559, October 2, 1990).

OPINIONS BELOW

The opinion of the court of appeals is reported at 915 F.2d 535 and is reprinted in the separately bound appendix to this *certiorari* petition (hereafter Pet. App.) at pp. 1a-16a. The district court issued an opinion as to some aspects of the case which is unreported and appears at Pet. App. 30a-34a.

JURISDICTION

The court of appeals' judgment was entered on October 2, 1990, and its order denying rehearing was entered on February 26, 1991. On May 9, 1991 Justice O'Connor entered an order extending the time for filing this *certiorari* petition to and including June 27, 1991. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1254(1). The district court had jurisdiction pursuant to 29 U.S.C. § 185(a). The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291.

STATUTORY PROVISIONS INVOLVED

Section 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a), provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Section 8(a)(5) of the National Labor Relations Act, 29 U.S.C. § 158(a)(5), provides:

> It shall be an unfair labor practice for an employer—. . .
>
> (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title.

Section 8(b)(3) of the National Labor Relations Act, 29 U.S.C. § 158(b)(3), provides:

> It shall be an unfair labor practice for a labor organization or its agents—
>
> * * * *
>
> (3) to refuse to bargain collectively with an employer, provided it is a representative of his em-

ployees subject to the provisions of section 159(a) of this title[.]

STATEMENT OF THE CASE

1. The issues in this case arose when four union-management trust funds established to provide benefits to employees covered by certain collective bargaining agreements sued the Wilson Equipment Company and the company's principals ("the Wilsons" or "the employer") to recover fringe benefit contributions alleged to be due and owing. The Wilsons defended on the ground that the collective bargaining agreement on which the trust funds based their claim was void because entered into as a result of fraud.

The Wilsons also filed a third-party complaint against International Union of Operating Engineers, Local No. 12 ("Local 12" or "the union") asserting, as here relevant, a pendent state law fraud claim seeking damages for emotional distress, punitive damages, and indemnity for economic losses. Pet. App. 4a-5a.

The third-party complaint alleged that the Wilsons were induced to enter into the collective bargaining agreement because of two statements made by a union business agent. The first statement was that the employer had to be a union contractor to continue to do work on a particular construction site; the second indicated that the agreement offered for signature would not affect the "status with Local 12" of Mr. Wilson (who was already a union member). Pet. App. 4a.

It was further alleged that each of these statements was false: The first because the general contractor on the construction site in question did not in fact require that all subcontractors have union collective bargaining agreements. And the second because Mr. Wilson understood the union's statement regarding union "status" to refer not to his *personal* status as a union member, but to the status of his company as an employer, which the agreement did indeed affect. Pet. App. 4a.

In response to the third-party complaint, the union took the position that no state tort cause of action for fraud in negotiating a collective bargaining agreement will lie where the agreement concerns employees covered by § 301 of the Labor Management Relations Act ("LMRA") 29 U.S.C. § 185, and § 8 of the National Labor Relations Act ("NLRA") 29 U.S.C. §158.

2. Eventually this case was tried to a jury. The district court, in a ruling passing on the union's LMRA § 301 defense, distinguished between the two statements alleged to be fraudulent: With respect to the statement that signing the collective bargaining agreement would not affect Wilson's "status with Local 12", that court ruled that § 301 precludes a state law action for fraud because it would be necessary to construe the agreement in order to determine the truth or falsity of the statement. As to the statement that the employer would have to sign a union agreement in order to qualify for certain work, however, the district court ruled that § 301 does not preclude a state fraud claim because the truth of the claim could be adjudicated without considering the meaning of the agreement.[1]

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[1] Throughout this case, the courts and the litigants have referred to the claim as to the effect on union "status" as alleging "fraud in the execution", and the claim as to the need for union contractor status as alleging "fraud in the inducement," echoing the Ninth Circuit's terminology in *Southwest Administrators, Inc. v. Rozay's Transfer, Inc.*, 791 F.2d 769, 774-75 (9th Cir. 1986), *cert. denied*, 479 U.S. 1065 (1987) (*Rozay's I*).

As to the "status with Local 12" remark, the parties agreed that the union representative indeed made the remark, but disagreed about whether Mr. Wilson reasonably understood the statement to mean that signing the agreement would not affect his status as an *employer*, as opposed to his status as an *individual union member*. There was completely conflicting testimony, however, concerning the "union contractor status" remark, with the union business agent testifying that in fact it was a representative of the general contractor, not of the union, who told Mr. Wilson that the employer could only continue on the job if the Wilsons signed a union collective bargaining agreement. Pet. App. 3a.

In accord with the forgoing ruling the district judge specifically instructed the jury that the elements of a state law fraud claim and a § 301 fraud claim are different. Under California law, fraud can be based on *either* intentional *or* negligent misrepresentation, and damages can include compensation for emotional distress as well as punitive damages. Pet. App. 21a-24a. In contrast, the jury was instructed that on the § 301 fraud claim, liability must be premised upon an intentional misrepresentation, and the relief available is rescission of the agreement and equitable indemnity for economic losses (to be assessed by the judge), but not emotional distress or punitive damages. Pet. App. 24a-25a.

So instructed, the jury returned a verdict for the Wilsons on both the state and the federal fraud claims. On the state law cause of action, the jury awarded $200,000 in emotional distress damages; on the § 301 "fraud in the execution" claim, the jury found liability only, leaving the amount of the indemnity to the judge (as instructed). Pet. App. 21a-25a.[2]

3. On appeal, a divided panel of the Ninth Circuit upheld the district court's preemption rulings. The majority, Circuit Judge Hug and District Judge Ezra (sitting by designation) recognized that "an action for fraud in the inducement is cognizable under section 301, to test the

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[2] The collection action by the trusts was tried at the same time. The jury found for the Wilsons in that action, on the ground that the underlying collective bargaining agreement was void *ab initio* for lack of mutual assent. Pet. App. 19a.

Thus, although, on the district judge's view of the case the union would have had to indemnify the Wilsons on either the state or the federal fraud claim for any payments made by the Wilsons to the trusts, in fact no such payments were made.

The district judge did, however, hold the union liable (jointly and severally with the trusts) for consequential damages for the two fraud causes of action in an amount equal to the attorneys' fees incurred in defending the collection action. Pet. App. 27a.

The jury, although finding that the union's misrepresentation was intentional, declined to award punitive damages.

formation of an agreement." Pet. App. 9a. Despite the availability of that precisely parallel § 301 cause of action, however, the court of appeals determined that an employer or a union also has a *state law cause of action for fraud*. The court of appeals majority read several of this Court's cases—principally *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985) and *Lingle v. Norge Division of Magic Chef Inc.*, 486 U.S. 399 (1988)—as dictating this result.

On the Ninth Circuit's reading of these precedents, only "the possible state interference with consistent *interpretation* of a collective bargaining agreement evokes preemption." Pet. App. 8a (emphasis added). Even though a fraud claim impugns the validity of the agreement as a whole, the majority maintained that there is no § 301 preemption because the state-law claim does not "require reference to the collective bargaining agreement." Pet. App. 10a.[3]

Judge Canby dissented, reasoning that

> When a state claim cannot succeed unless the state court determines that a collective bargaining agreement is invalid, that state claim is not "independent" of the collective bargaining agreement within the meaning of *Lingle*. *Lingle* establishes that a state claim is not independent when it requires construction of the collective bargaining agreement. . . . To hold that a collective bargaining agreement means nothing—that it is invalid—is the most radical form of construction. . . . Whether a collective bargaining agreement is valid, and what types of conduct may

[3] The court of appeals majority also held that there is no preemption of the state law cause of action for fraud alleged here under *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 244-45 (1959) and its progeny. Pet. App. 10a-12a. While noting that under other circumstances "a misrepresentation at the bargaining table [can be] an unfair labor practice," Pet. App. 12a, the majority maintained that "in the absence of a recognized bargaining relationship, [the] misrepresentation to Wilson at the jobsite is not arguably a violation of section 8(b)(3) [of the NLRA]," Pet. App. 12a.

vitiate an otherwise valid agreement, are matters that ought to be governed by uniform federal law. [Pet. App. 14a-15a.]

REASONS FOR GRANTING THE WRIT

INTRODUCTION

The Ninth Circuit held in this case that one party to a collective bargaining agreement can sue the other under *either* § 301 of the Labor-Management Relations Act ("LMRA"), 29 U.S.C. § 185, *or* state law on a claim that the agreement is void because of fraudulent conduct in the underlying collective bargaining negotiations. The court of appeals created this option even where—as the district court ruled—the elements of the § 301 cause of action and the remedies available thereunder differ significantly from those under state law.

The question presented is thus, whether a fraud action of this kind is within the area covered by § 301's federal common law of labor contracts, and, if so, whether that § 301 law preempts state law. For two compelling reasons this question requires this Court's immediate attention.

First, the courts of appeals have grappled for years with questions concerning the appropriate source of law, federal or state—and the appropriate forum or fora—for determining the legal issues raised by challenges to the validity of collective bargaining agreements, with incompatible results. At the same time, *no* court of appeals has reached the conclusion reached by the Ninth Circuit here: *viz.*, that the parties to a facially valid collective bargaining agreement can sue *either* under § 301 itself *or* under state law to invalidate the agreement on the basis of fraud. Given the frequency with which unions and employers negotiate on a multistate basis, and the likelihood that a single collective bargaining agreement may apply in different jurisdictions, it is of particular prac-

tical importance that the most basic legal questions affecting the validity of such agreements be covered by a uniform legal rule and not different rules within different circuits.

Second, the Ninth Circuit's result in this case is squarely at odds with more than thirty years of this Court's jurisprudence. The precedents in this Court, we submit, stand for the propositions that in enacting § 301 Congress intended to provide for uniform nationwide standards governing *all* the legal questions that relate directly to the negotiation and enforcement of collective bargaining agreements, and that these standards are to be developed from—and be consistent with—the overall national labor policy. Contrary to the Ninth Circuit's supposition, this Court's most recent § 301 preemption cases—like its earlier cases—are firmly grounded in these basic principles. The question whether the federal common law of collective bargaining agreements is, as we believe, uniform and exclusive over its entire range or, instead, supplants state law only within a limited area is one that is absolutely fundamental to the proper implementation of the federal labor laws.

I. THE COURTS OF APPEALS' LAW GOVERNING THE ADJUDICATION OF THE VALIDITY OF COLLECTIVE BARGAINING AGREEMENTS IS IN DISARRAY

The pivotal legal issue in this case is whether federal law, state law—or, as the Ninth Circuit held, both—governs where the validity, and hence the binding effect, of a collective bargaining agreement is challenged. The court of appeals' decisions on this issue are in disarray.

1. (a) LMRA § 301 provides in terms for federal court "[s]uits for violation of contracts between an employer and a labor organization representing employees". 29 U.S.C. § 185(a). And, in *Textile Workers Union v.*

Lincoln Mills, 393 U.S. 448 (1957), this Court held that § 301 is not merely a jurisdictional grant, but also "authorizes federal courts to fashion a body of federal law for the enforcement of these collective bargaining agreements." *Id.* at 451.

There is a long-standing split in the circuits on both of the following issues: (1) whether § 301 empowers the federal courts to adjudicate issues relating to the negotiation, and the validity, of a collective bargaining agreement; and (2) if so, whether that jurisdictional grant obtains only when such issues are raised by the defendant in a § 301 suit to enforce the agreement.

Five circuits, including the Ninth Circuit, now hold—in some instances reversing earlier decisions to the contrary—that the federal common law fashioned under § 301 *does* cover cases raising issues concerning the validity of collective bargaining agreements, whether the plaintiff is seeking to enforce the agreement or to void the agreement. *I.B.E.W., Local 481 v. Sign-Craft, Inc.*, 864 F.2d 499 (7th Cir. 1988); *Mack Trucks, Inc. v. Intern. Union, UAW*, 856 F.2d 579 (3d Cir. 1988); *Rozay's Transfer v. Local Freight Drivers, L. 208*, 850 F.2d 1321 (9th Cir. 1988), *cert. denied*, 490 U.S. 1030 (1989) (*Rozay's II*); *McNally Pittsburg, Inc. v. Intern. Iron Workers*, 812 F.2d 615, 618-19 (10th Cir. 1987); *Board of Trustees v. Universal Enterprises, Inc.*, 751 F.2d 1177, 1184 (11th Cir. 1985). *See also United Steelworkers of Am., AFL-CIO v. Rome Indus. Inc.*, 437 F.2d 881, 882 (5th Cir. 1970).

Two circuits, however, hold that while there *is*, or may be, § 301 jurisdiction to adjudicate contract validity issues raised by the *defendant* in an action brought to enforce a collective bargaining agreement, there is *no* such jurisdiction where a *plaintiff* brings an action to have an agreement declared invalid and unenforceable, whether because of fraud or for another reason. *A.T. Massey Coal Co., Inc. v. Intern. Union*, 799 F.2d 142 (4th Cir.

1986); *Hernandez v. National Packing Co.*, 455 F.2d 1252 (1st Cir. 1972).[4]

Yet another circuit has recently determined that there is *no § 301 jurisdiction at all* to determine contract validity issues—including whether fraud affected the formation of a collective bargaining agreement—even if the issue arises in the course of a suit filed to enforce the agreement. *Huessner v. National Gypsum Co.*, 887 F.2d 672, 676 (6th Cir. 1989).

(b) The union involved in *Rozay's II*, *supra*, filed a *certiorari* petition and this Court then invited the Solicitor General to file a brief *amicus curiae*. *See* Brief for the United States as Amicus Curiae in *Local Freight Drivers, Local 208 v. Rozay's Transfer, Inc.*, No. 88-535 ("U.S. Br."). The Solicitor General argued, first, that the Ninth Circuit was correct in ruling that § 301 does empower the courts to consider contract validity issues and, second, that there was no need for this Court to review the Ninth Circuit's decision there.

In so doing the Solicitor General *assumed*—correctly, we submit—that the decisions of the various courts of appeal determining that a § 301 cause of action is available against fraudulent conduct in negotiating a collective bargaining agreement necessarily entails the holding that *no state law cause of action is available*:

> This interpretation of Section 301(a) is necessary to assure the consistent applicability to collective agreements of federal law fashioned under that provision. . . . Fraud in the inducement is a traditional

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[4] *Hernandez*, a very brief opinion, concerned a situation in which a group of employees sought to void a collective bargaining agreement because, they asserted, the union entering into the contract no longer represented the majority of the employees. 455 F.2d at 1253. The case can perhaps be read as limited to the situation in which the asserted invalidity is premised upon a representational question, or at least upon a claim of invalidity not available in a traditional contract action.

> contractual defense that can be interposed in a Section 301(a) action for breach of a collective bargaining agreement. When such a defense is raised, its validity is determined by reference to federal common law.
>
> * * * *
>
> If a purpose of Section 301(a) is to provide a uniform body of federal law that is consistently applicable to "disputes arising out of labor contract" (*Allis-Chalmers Corp. v. Lueck*, 471 U.S. [202] 209), that section must also apply to suits seeking to invalidate contracts on the same ground.
>
> Any different result would mean that the forum for the dispute, and possibly the applicable law, would depend on which of the parties to a collective agreement was at the top of the caption in a case in which fraud was the decisive issue. [U.S. Br. at 6, 11.]

And the Solicitor General was also of the view that

> The courts of appeals are moving toward a consensus that Section 301(a) confers jurisdiction to adjudicate a claim that a collective bargaining agreement is invalid as well as a claim that a valid agreement has been breached; those circuits that have not yet adopted this view are likely to do so when they reconsider the issue. [*Id.* at 7.]

The Solicitor General's power of legal analysis has proved greater than his power to divine the future.

In the instant case, the Ninth Circuit has *widened* the split in the circuits that existed at the time of *Rozay's II*, by holding that there is *both* a § 301 cause of action *and* a state law cause of action for fraud in the negotiation of a collective bargaining agreement.[5]

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[5] Indeed, the majority opinion in this case leads to precisely the anomaly the Solicitor General thought had been eliminated by the *Rozay's II* opinion: Presumably, collective bargaining agreement validity issues, including fraud issues, will continue to be governed

Of equal importance the Sixth Circuit, one of the courts of appeals that the Solicitor General predicted would abandon its earlier view and join the emerging "concensus" has instead widened the circuit split in the opposite direction. For the Sixth Circuit has now ruled that contract formation questions—including those turning on fraud—are *never* within § 301's purview. *Huessner, supra,* 887 F.2d at 676.

Given these developments it is plain that the time has come for this Court to settle this circuit conflict.

2. There is another line of court of appeals decisions that bears upon the issue of whether federal law or state law—or both—governs where the validity of a collective bargaining agreement is challenged on the basis of fraud in the collective bargaining negotiation process. These decisions hold that state law claims based on alleged fraudulent misconduct in the negotiation process are ordinarily preempted by § 8 of the National Labor Relations Act. *Parker v. Connors Steel Co.*, 855 F.2d 1510 ((11th Cir. 1988), *cert. denied*, 490 U.S. 1066 (1989); *Serrano v. Jones & Laughlin Steel Co.*, 790 F.2d 1279 (6th Cir. 1986). *See also Kolentus v. Avco Corp.*, 798 F.2d 949, 960-62 (7th Cir. 1986), *cert. denied*, 479 U.S. 1032 (1987).

These NLRA preemption cases have involved situations in which employees have sought relief against their employer's alleged fraud in negotiating a collective bargaining agreement. In each instance, the court of appeals has

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by § 301 federal common law when the issues arise as a *defense* to an action to enforce a collective bargaining agreement. Yet, federal and state law on fraudulent inducement issues vary on such basic questions as whether *international* misrepresentation is required or not. Thus, as we have argued in text, under the instant decision a collective bargaining agreement could be declared valid under federal law in a § 301 enforcement action, while the same agreement is held invalid, and the plaintiff in the § 301 enforcement action held liable in damages, in a state law fraud suit brought by the other party.

held that any state law cause of action for fraud that would otherwise inure to the employees' benefit is preempted by the NLRA. These courts have reasoned that the gravamen of the complaint—that the employer made intentional, material misrepresentations in collective bargaining negotiations—is nothing more than an allegation of bad faith bargaining, directly proscribed by NLRA §§ 8(a)(5) and 8(b)(3), 29 U.S.C. §§ 158(a)(5) and (b)(3). *Parker v. Connors Steel Co., supra,* 855 F.2d at 1516; *Serrano v. Jones & Laughlin Steel Co., supra,* 790 F.2d at 1286-87; *see also Kolentus v. Avco Corp., supra,* 798 F.2d at 960-62.

In so ruling, the *Parker* and *Serrano* courts did not directly address the question whether a federal cause of action for fraud during the collective bargaining negotiation process is available under § 301. *Compare Rozay's II, supra,* 850 F.2d at 1326 (even where the alleged fraud in the inducement of a collective bargaining agreement is an unfair labor practice, federal district courts have concurrent jurisdiction under § 301).[6] But the *Parker* and *Serrano* courts did address the general question whether Congress intended the law governing collective bargaining negotiations to be uniform nationwide, or instead intended to allow for diversity based on local law.

In both instances, the conclusion was that the process of negotiating a collective bargaining agreement is one as to which federal interests are paramount, and as to

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[6] However, in light of *Huessner, supra,* it is now clear that in the Sixth Circuit, no such cause of action is available. Thus, in that court a litigant who claims that a collective bargaining agreement is void because of fraud in its inception may have only the option of filing an unfair labor practice charge. *See* 887 F.2d at 676.

In contrast, in the Ninth Circuit, such a litigant always has *either* a state or a federal judicial cause of action for damages, and in many instances—as in this case—may have both.

which the conflict and confusion inherent in permitting state causes of action cannot be permitted. *Serrano*, 790 F.2d at 1288 ("[w]hile the state has an interest in protecting its citizens from misrepresentations, we believe this interest is properly overridden by the need to enforce a uniform federal labor law"); *Parker*, 855 F. 2d at 1518 (state law fraud claims regarding collective bargaining negotiations are impermissible because, among other reasons, such claims "may subject the employer to conflicting substantive rules."); *see also Kolentus*, *supra*, 798 F.2d at 961.

In contrast, under the Ninth Circuit decision here, the legality of collective bargaining negotiations, the enforceability of the resulting agreements, and the remedies for engaging in improper bargaining conduct will *not* be governed by a uniform national rule. Aside from the obligation created by the § 301 preemption doctrine, the states, after all, have no independent obligation to develop their own law governing the application of fraud concepts to collective bargaining negotiations with an eye toward the harmonious development of the federal labor laws.[7]

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[7] For purposes of this petition, we do not take issue with the Ninth Circuit's conclusion that *Parker* and *Serrano* are not directly relevant here because in those cases, unlike this one, there was a traditional NLRA § 9(a) bargaining relationship, and §§ 8(a)(5) and 8(b)(2) therefore apply with full force. Pet. App. 10a-12a.

We do note, however, that, contrary to the Ninth Circuit's conclusion, the agreement that the Wilsons signed *did* on its face cover the working conditions of any employees the Wilsons might hire, and for that reason *was*, by definition—whatever it may have been called—a prehire agreement in the construction industry, valid under NLRA § 8(f), 29 U.S.C. § 158(f). *See John Deklewa & Sons*, 282 NLRB No. 184 (1987), *enforced* 843 F.2d 770 (3d Cir.), *cert. denied*, 488 U.S. 889 (1988). While *Deklewa* holds that there is no federal obligation to bargain for § 8(f) agreements (and therefore, apparently, no obligation to bargain in good faith), that decision does not suggest that the *states* may impose upon the parties to § 8(f) negotiations the substantive bargaining obliga-

The net result of the opinion below, then, is to create a regime under which the enforceability of a *single collective bargaining agreement* covering employees in several states can vary from state to state, depending upon the vagaries of the state law of fraud, and through which each state can substitute its own incompatible legal standards governing collective bargaining negotiations for the substantive standards established as part of the national labor policy.[8]

This result is in direct conflict with the premise of *Parker* and of *Serrano* that the negotiation of collective bargaining agreements is an area in which uniform federal law must be paramount. And, as we now develop, this result is also in direct conflict with this Court's cases under § 301 itself, which also stress that a uniform federal law is essential with regard to the collective bargaining negotiation process.

II. THE UNIFORM FEDERAL COMMON LAW OF COLLECTIVE BARGAINING AGREEMENTS DEVELOPED UNDER § 301 APPLIES TO ALL QUESTIONS CONCERNING THE ENFORCEMENT AND EFFECT OF SUCH AGREEMENTS, AND NOT ONLY TO THE INTERPRETATION OF CONCEDEDLY VALID AGREEMENTS

The Ninth Circuit proceeded on the premise that while the § 301 federal common law developed pursuant to *Lincoln Mills*, *supra*, covers the formation, the interpretation and the enforcement of collective bargaining agreements, that federal law preempts state law *only*

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tions the Labor Board has declined to impose. *See Deklewa*, *supra*, 282 NLRB at 1386-89. To the contrary, this Court has squarely decided that the states may *not* enter "into the substantive aspect of the bargaining process to an extent Congress has not countenanced;" that process is "not to be regulable by States any more than by the NLRB." *Machinists v. Wisconsin Emp. Rel. Comm'n*, 427 U.S. 132 (1976).

[8] Indeed, that approach led, in this very case, to applying different legal standards to two statements that were part of a single collective bargaining negotiation conversation.

where the legal dispute concerns in whole or part the meaning of a discrete provision of such an agreement.

That premise is doubly flawed. There is no basis for any such distinction in this Court's jurisprudence. Equally to the point, such a rule would undermine the primary goal of § 301 as stated by this Court: *viz.*, the development of a uniform nationwide law governing collective bargaining agreements, based on national labor policy as defined by the applicable federal statutes and regulations.

1. Contrary to the Ninth Circuit's supposition, this Court has made it clear that the scope of § 301's federal common law and the area of federal exclusivity *are* coextensive.

For example, *Dowd Box v. Courtney*, 368 U.S. 502 (1962), raised the question—akin to the question raised here—whether a collective bargaining agreement is unenforceable because the employer's bargaining representative who signed the agreement lacked the authority to do so. It was in that context—*viz.*, the context in which the Ninth Circuit now maintains that there is *no* need for uniform federal law consistent with the national labor policy—that *Dowd Box* stated that § 301 creates "an all-embracing body of federal law" for "the *enforcement* of agreements within its ambit." 368 U.S. at 506, 507 (emphasis supplied). And it was in that context as well that *Dowd Box* explained the origins and purpose of § 301 in terms entirely inconsistent with the Ninth Circuit's conclusion in this case:

> The Labor Management Relations Act of 1947 represented a far-reaching and many-faceted legislative effort to promote the achievement of industrial peace *through encouragement and refinement of the collective bargaining process.* It was recognized from the outset that such an effort would be purposeless unless both parties to the collective bargaining agreement would have reasonable assurance that *the con-*

> *tract they had negotiated would be honored.* Section 301(a) reflects congressional recognition of the vital importance of *assuring the enforceability of such agreements.* [368 U.S. at 509 (emphasis supplied).][9]

The fundamental congruence between this uniformity concern and the affirmative coverage of § 301 was made even more plain, in language that could hardly be more definite, in *Local 174 Teamsters v. Lucas Flour Co.*, 369 U.S. 95 (1962):

> The dimensions of § 301 require the conclusion that substantive principles of federal labor law must be paramount *in the area covered by the statute.* Comprehensiveness is inherent in the process by which the law is to be formulated under the mandate of *Lincoln Mills*, requiring issues raised in suits *of a kind covered by § 301* to be decided according to the precepts of federal labor policy. [*Id.* at 103 (emphasis supplied).]

And the *Lucas Flour* Court went on to explain that "the area covered by the statute," as to which "the need for a single body of federal law [is] particularly compelling," 369 U.S. at 104, centers upon the process of negotiating collective bargaining agreements:

> The ordering and adjusting of competing interests through a process of free and voluntary collective

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[9] The Ninth Circuit ruling in this case, in contrast, intrudes state law deeply into the "collective bargaining process." And that ruling removes any federal "assurance" of enforcement of the agreements negotiated through that process. For the decision below permits parties to collective bargaining agreements to attack the validity of those agreements under state law as long as the premise for their attack is what was said and done in the negotiation of the agreement and not the content of the agreement itself.

For example, authority issues such as those involved in *Dowd Box* itself can ordinarily be determined without regard to any agreement actually negotiated by the putative agent. Under the Ninth Circuit approach, apparently, a state could establish rules regarding the authority of agents to negotiate collective bargaining agreements and provide a cause of action for rescission and damages with respect to any agreement not negotiated according to those rules.

> bargaining is the keystone of the federal scheme to promote industrial peace. State law which frustrates the effort of Congress to stimulate the smooth functioning of that process thus strikes at the very core of federal labor policy. With due regard for the many factors which bear upon competing state and federal interests in this area . . . we cannot but conclude that in enacting § 301 Congress intended doctrines of federal labor policy uniformly to prevail over inconsistent local rules. [*Id.*].[10]

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[10] If the states are free to impose their own substantive standards to police "the process of free and voluntary collective bargaining" and to determine the validity of the agreements the process is designed to facilitate, the same agreement could be valid in some states and invalid in others and the grounds for judging validity could be consistent with federal law in some states and not in others.

For example, under California law, negligent as well as intentional misstatements in the negotiation of a contract can support a tort cause of action and result in voiding the agreement, as well as in substantial damages. *Cicone v. URS Corp.*, 185 Cal. App. 3d 194 198-99 (1986); Cal. Civ. Code § 1710 subdiv. 2. The NLRA, in contrast, establishes a "good faith" standard to govern collective bargaining negotiations (§§ 8(a)(3) and 8(d), 29 U.S.C. §§ 158(a)(3) and (d)). The NLRA standard does not penalize unintentional, albeit negligent, misstatements in the bargaining process. *See, e.g., Eltec Corp.*, 286 NLRB 890, 893 & n.15 (1987); *Allbritton Communications*, 271 NLRB 201, 205 & n.13 (1984), *enforced*, 766 F.2d 812 (3d Cir. 1985), *cert. denied*, 474 U.S. 1081 (1986); *Chevron Chemical Co.*, 261 NLRB 44, 46 & n.10 (1982) (all holding that the objective "reasonableness" of parties' bargaining positions is irrelevant under the Act and that only statements and positions which are "so predictably unacceptable as to warrant the evidentiary conclusion that they have been proffered in bad faith" give rise to liability under the Act). If employers and unions can be held liable under state law for compensatory damages due to negligent misstatements in the bargaining process, their bargaining representatives might well curb the free interchange of views at the bargaining table for fear of incurring substantial liability thereafter because of an unintentional factual misstatement.

Even if one assumes that the bargaining process in this case was not directly covered by the NLRA standard because the agreement was entered under NLRB 8(f), imposing as to such bargaining relationships a standard *stricter* than that applicable where Congress did regulate the bargaining process would surely conflict

The *Lucas Flour* Court did, to be sure, view the legal concepts used in construing the terms of an agreement as *within* the area of uniform federal law covered by § 301. 369 U.S. at 103. But *Lucas Flour* emphasized that the *reason* that § 301's rules of contract interpretation must be uniform is that conflicting interpretive rules could impede the negotiation process. *Id.* (conflicting interpretive rules "would inevitably exert a disruptive influence upon . . . the negotiation . . . of collective agreements" by requiring the parties "to formulate contract provisions in such a way as to contain the same meaning under two or more systems of law which might someday be invoked in enforcing the contract.")

In other words, questions that turn on contract interpretation are only a subset of the questions that can arise in cases concerning contract enforcement and that trigger the need to protect the process of negotiating collective bargaining agreements from nonuniform legal rules.

Here, the dispute between the parties centers *directly* upon the manner in which collective bargaining negotiations were conducted, rather than indirectly, as in cases concerning discrete contract construction issues. Thus, in cases such as this one and *Dowd Box*, the need for uniformity in the governing law is, if anything, *more* acute than in cases concerning a limited dispute over the meaning of particular terms of the agreement. *See also Smith v. Evening News Assn.*, 371 U.S. 195, 200 (1962).

2. This Court's more recent § 301 preemption cases are squarely rooted in the seminal cases discussed above. *See, e.g., Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985); *Electrical Workers v. Hechler*, 481 U.S. 851 (1987); *Caterpillar, Inc. v. Williams*, 482 U.S. 386 (1987); *Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399 (1988); and *United Steelworkers v. Rawson*,

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with the national labor policy. See n.7 p. 14 *supra*. Indeed, the effect would be to *discourage* employers and unions in the construction industry from voluntarily negotiating freely toward the end of creating prehire agreements.

—— U.S. ——, 110 S.Ct. 1904 (May 14, 1990) (all recounting the evolution of the § 301 preemption doctrine from *Lincoln Mills* to *Lucas Flour*).

Far from superseding the earlier precedents, as the Ninth Circuit supposed, the *Allis-Chalmers* line of cases simply elucidate the application of the principles developed in those cases to a distinct class of disputes different from the dispute presented here: *viz.*, contract disputes that are *not* between the direct parties to the collective bargaining agreement themselves, and do *not* directly concern the validity or enforcement of that agreement.[11]

The most recent of these § 301 preemption cases, *United Steelworkers v. Rawson, supra,* summarizes the history of § 301 preemption and the general standard delineating the area within which this uniform federal law applies in a way entirely consistent with the seminal cases, and entirely inconsistent with the much more limited view taken by the Ninth Circuit here:

> Over thirty years ago, this Court held that § 301 not only provides the federal courts with jurisdiction over controversies involving collective-bargaining agreements but also authorized the courts to fashion "a body of federal law for *the enforcement of these collective bargaining agreements.*" *Textile Workers v. Lincoln Mills* . . . 353 U.S. [at 451]. Since then, the Court has made clear that § 301 is a potent source of federal labor law, for though state courts have concurrent jurisdiction over *controversies involving collective-bargaining agreements, Charles Dowd Box Co. v. Courtney* . . ., state courts must apply federal law in deciding *those claims.* . . . State law is thus "pre-empted by § 301 in that only

[11] *Allis-Chalmers, supra, Caterpillar Inc. v. Williams, supra,* and *Lingle, supra,* all involved suits by individual empoyees against their employer. *Hechler* and *Rawson* both involved suits by individual employees against the union representing those employees for collective bargaining purposes. In none of these cases did the cause of action, in terms, concern the propriety of the bargaining process or the validity of the resulting collective bargaining agreement.

> the federal law fashioned by the courts under § 301 governs the interpretation *and application* of collective bargaining agreements. . . . [110 S. Ct. at 1909.]

This case is, most assuredly, one in which a party to the collective bargaining agreement is suing the other party claiming that the agreement is entirely void, and that the defendant owes the plaintiff damages because of an attempt to enforce the invalid agreement. As such, the case is on its face a "controversy" between the parties to the collective bargaining agreement assuredly "involving that agreement" and its "enforcement" and "application."

In describing the more recent § 301 preemption cases, moreover, *Rawson* makes clear repeatedly that the general standard for determining whether state law is preempted is whether the state cause of action is "without existence independent of the agreement," *not* whether there is a need to construe the meaning of the agreement's terms in the course of considering the state law claim. 110 S. Ct. at 1909-10 (describing *Allis Chalmers, supra*); *see also id.*, describing *Hechler, supra* (whether the state law duty relied upon "was one without existence independent of the collective-bargaining agreement" or "sufficiently independent of the collective-bargaining agreement"); *id.* at 1910 (issue is whether "respondents' tort claim can[] be described as independent of the collective bargaining agreement:); *see also id* at 1915 (Kennedy, J., dissenting) (agreeing that "a State cannot circumvent our decisions in *Lingle*, *Hechler*, and *Allis-Chalmers*, by the mere 'relabeling' as a tort claim an action that in law is based upon the collective bargaining *process*" (emphasis supplied).

The employer's fraud claim in this case is *directly* "based upon the collective bargaining process" and, as a claim that would not have arisen at all had there been no collective bargaining agreement in the first place, is definitely not "independent of the collective bargaining agreement."

3. In concluding, to the contrary, that the § 301 common law of labor contracts supersedes state law only with respect to cases involving the meaning of concededly valid contract terms, the Ninth Circuit relied on a few sentences in *Allis-Chalmers* and in *Lingle*. Pet. App. 6a-7a. In context, however, it is plain those two cases stressed the need for federal uniformity in giving meaning to discrete contract clauses because the *facts* of those cases implicated only that aspect of § 301 jurisdiction. We submit that those decisions can not fairly be read to suggest—contrary to the earlier decisions summarized above *and* to the later decision in *Rawson*—that only in the area of disputes over the meaning of concededly valid contractual language does the policy of federal uniformity under § 301 hold sway.

For example, *Allis-Chalmers*, *supra*, begins by describing the area of federal uniformity broadly:

> [Q]uestions relating to what the parties to a labor agreement agreed, and what legal consequences were intended to flow from breaches of that agreement, must be resolved by reference to uniform federal law, whether such questions arise in the context of a suit for breach of contract or in a suit alleging liability in tort. . . . [471 U.S. at 211.] [12]

See also id. at 209 ("§ 301 [is] a congressional mandate to . . . fashion a body of federal common law to be used to address disputes *arising out of labor contracts.*"); *id.* at 210-11 (§ 301's policies require that "'the relationships created by [a collective bargaining agreement] be defined by application of 'an evolving federal common law grounded in national labor policy . . .'"); *id.* at 213 (general preemption standard is whether "the tort intrin-

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[12] Here, the Wilsons' contention was that they cannot be taken to have entered into any agreement at all, because they were misinformed, and that the breach of the agreement should therefore give rise to no remedies in favor of the employees but, instead, should allow the employer to claim damages for the injuries caused in defending against the breach.

sically relates to the nature and existence of the contract.")

When the *Allis-Chalmers* Court turned to the particular cause of action involved there—an action under state tort law by an employee against his employer for bad faith performance of the labor contract—the Court quite naturally focused upon whether that cause of action "ultimately depends upon the terms of the agreement between the parties." *Id.* at 216. But the Court was careful, at the end of the opinion, to "emphasiz[e] the narrow scope of the conclusion we reach today," and to explain quite clearly that that conclusion was not meant to circumscribe "the full scope of the preemptive effect of federal labor-contract law", but rather leaves other aspects of § 301 preemption "to be fleshed out on a case-by-case basis." *Id.* at 220.

Similarly, *Lingle* was a case in which the *only* possible connections between the state law cause of action and the § 301 law of collective bargaining agreements were that the plaintiff was an employee covered by such an agreement, and that the issues in the case concerned a matter subject to collective bargaining and often covered by collective agreements; *viz.*, the propriety of an employment termination decision. The suit was *not* one between the parties to the collective bargaining agreement, and did *not* concern directly *any* aspect of the agreement, its formation, or its enforcement. It was in this narrow context that this Court stated that § 301 is preemptive "only if . . . application [of state law] requires the interpretation of a collective-bargaining agreement." 486 U.S. at 413. *Compare* Pet. App. 7a, relying on that statement, without regard to its context, as controlling here.

But, as both the pre-*Lingle* jurisprudence of this Court and the broader approach taken later by the *Rawson* Court attest, this portion of *Lingle* was necessarily limited to cases involving the kind of more remote connec-

tion to the collective bargaining process involved in *Allis-Chalmers* and its progeny. *Lingle* does *not* stand in splendid isolation and does *not* stand for a principle applicable to situations, like this one, in which questions concerning the negotiation and effectiveness of a collective bargaining agreement are *directly at stake*. Indeed, as Judge Canby noted in dissent below, there is nothing in *Lingle* to suggest that by "interpretation" of the agreement, this Court had in mind only differing constructions of concededly valid provisions, as opposed to differing views about whether the provision has any valid application at all.

Allis-Chalmers, then, holds it *sufficient* for § 301 preemption that the "state law claim is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract." 471 U.S. at 220. But the *Allis-Chalmers* line of cases does *not* hold that kind of relationship between the collective bargaining agreement and the state cause of action to be *necessary* for the federal uniformity policy that underlies § 301 jurisprudence to become applicable. And this Court's § 301 preemption decisions as a whole make clear that the provision's "substantive principles of federal law must be paramount in the area covered by the statute." *Lucas Flour, supra*, 369 U.S. at 103.

In sum, the Ninth Circuit's conclusion that state law standards can govern the collective bargaining negotiation process itself and determine the validity of a resulting collective bargaining agreement as long as the court can proceed without considering the meaning of discrete terms of the agreement profoundly misunderstands this Court's § 301 decisions and even more profoundly threatens the proper effectuation of the federal labor laws. For this reason, too, this case warrants this Court's review.

CONCLUSION

For the reasons stated above, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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